IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.880 OF 1996.

WITH

FIRST APPEAL NO.875/96

Maharashtra State Road Transport
Corporation : Appellants.

versus

Smt.Jhumrabai Anshiram Punde
& ors. : Respondents.

Mr.G.S.Hegde for the appellants.
Mr.S.G.Deshpande for respondents/claimants.

CORAM : D.G.DESHPANDE,J.

DATED : 3rd May 2005.

COMMON ORAL ORDER

1. Both these appeals arise out of different awards dated 20th February 1996. The parties are same; the advocates for the appellants and respondents are same, therefore, I am disposing

of these appeals by a common order.

2. Mr.Deshpande, appearing for the claimants, contended that the driver of the appellant has been properly held responsible for the accident and, therefore, no interference is required.

3. However, Mr.Hegde, appearing for the appellant, contended that neither the owner of the jeep nor the driver of the jeep appeared before the tribunal. They did not file their written statement and they did not enter into witness box. Similarly, nobody was examined on behalf of the insurance company. The claimants examined four witnesses and even if one of them i.e. Respondent No.1 was the occupant of the jeep and the victim of the accident, her evidence is not at all sufficient to prove the manner in which the accident occurred and, therefore, this is a case where the appellant examined their driver of the ST bus and on the basis of his evidence only, the liability saddled upon the appellant. He, therefore, contended that the approach of the tribunal in assessing the evidence of the driver of the ST bus is totally

wrong. He also contended that when the jeep driver or the owner of the jeep did not appear before the tribunal to explain as to how and in what manner the accident occurred, then the tribunal should have drawn adverse inference against them. Therefore, according to him, firstly, the order of fixing the liability against the appellant is wrong and alternatively, according to him, the responsibility of the appellant cannot be more than 25%.

3. A perusal of the record shows that Jhumrabai - respondent No.1 examined herself to prove the accident and the injuries she suffered. She has uttered only one sentence about the manner in which the accident took place and has stated that one ST bus come from the right direction and hit the jeep. The S.T. bus was in speed. The second witness is Bhimaji Punde. He does not know anything about the accident. But he has only tried to prove the income of Anshiram and another victim. Third witness is Dr.Sharad Bhure who examined both the victims. He does not know anything about the accident. 4th witness is Govind Kinnerkar. He has proved the income of Anshiram. He does not know anything about the

accident. This is, therefore, the evidence led by the claimants in respect of the accident.

4. It does not prove the case of the claimants that the ST Bus negligent and was responsible and liable for accident. However, the appellant examined their driver Gulabrao Fadatare. According to him, no accident took place at all and he came to know about the accident only after the police complaint. He has admitted that when he took right direction he had given horn and hand signal. He had denied that his bus was in speed. He has stated that he stopped the bus after completing the turn.

5. The tribunal has, in para 1 of its judgment, given particulars about the manner in which the accident took place. It is stated that at about 8.15 a.m.as the jeep came up to Vashi approach (junction) road on Sion Panvel Highway, one S.T.bus came from the opposite direction, but from the other side of the road divider. At that junction the bus took an abrupt right turn for going towards Vashi, without having any regard to the traffic coming from the opposite direction i.e. from Chembur direction. The jeep dashed

against the rear portion of the bus, which had taken complete turn by that time and was almost across the road. Because of the dash the jeep turned turtle causing instantaneous death of Anshiram and injured the respondent No.1.

6. It is true that manner in which the accident occurred might have been stated by the claimants in their application but from the evidence of the parties, reproduced by me as above, nothing, in respect of the aforesaid particulars, has been brought on record by the claimants. The tribunal has failed to see that the pleadings and proof are totally different and if the claimants plead that the accident took place in a particular manner, it was their responsibility to prove the accident. In fact the claimants have alleged that the jeep driver was also rash and negligent and, therefore, the appellant was joined along with jeep driver and the insurance company.

7. The basic lacuna in the case is, there is absolutely no evidence as to the manner in which the accident took place and who is responsible there for. Since however, according to the

appellant, the jeep driver was also responsible and since the jeep driver had not cared to appear before the tribunal and led evidence, this case has to be treated as a case of joint liability of both the ST driver as well as the jeep driver.

8. So far as apportionment of liability is concerned, the ST driver in his evidence has tried to contend that he is not at all responsible and, also considering the fact that bus had taken complete turn and almost cross the road, at that juncture, the jeep hit the Bus, therefore, this is a case of joint contributory negligence and, the negligence of jeep driver is 65% and that of the ST bus is 35%. Therefore, these appeals are required to be partly allowed. Hence the order :-

:ORDER:

Both these appeals are partly allowed.

In the compensation awarded by the tribunal, the appellant will be held liable to pay at 35% only. Remaining amount will be recoverable from other

respondents i.e. Opponent Nos. 2 and 3. Whatever money has been deposited by the appellant, the claimants will be entitled to withdraw the same as per the aforesaid order. Remaining balance will paid to the appellant. If the amount is not so deposited, the appellant will deposit the same within six weeks from today.

No order as to costs.

[D.G.DESHPANDE]

03/05/2005 JUDGE.